

THE STATE BAR OF CALIFORNIA



REQUEST FOR PROPOSAL

TO CONDUCT STATE BAR ELECTIONS
FOR THE BOARD OF GOVERNORS AND
THE CALIFORNIA YOUNG LAWYERS ASSOCIATION

This document is a Request for Proposal ("RFP") for services related to the design, conduct, operation, and management of The State Bar of California's Annual Election for seats on its Board of Governors and California Young Lawyers Association.

*The State Bar is seeking a one-year service contract, with an option to extend the contract for two additional one-year increments. All bid proposals must include pricing for a **three-year period**.*

*Please submit 7 copies of your proposal in a sealed envelope no later than **5:00 p.m. on Friday, October 14, 2005**. All responses to the Request for Proposal must be submitted to:*

*The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639*

Attn: Biljanna Sivanov

*Contact Information:
Phone: 415-538-2274
E-mail: Billie.Sivanov@calbar.ca.gov*

I. INTRODUCTION

Created in 1927 by special act of the California Legislature and written into the constitution in 1960, The State Bar of California (the "State Bar") is a public corporation within the judicial branch of our state government. It was established for purposes of performing governmental functions and assisting the California Supreme Court in attorney admission and disciplinary matters. As the administrative arm of the California Supreme Court, the State Bar's general duties include examining applicants for admission to practice law, formulating rules of professional conduct, disciplining members for ethical misconduct, preventing the unlawful practice of the law, and certifying lawyers as legal specialists. As of September 18, 2005, the State Bar had approximately 137,738 active members. State Bar membership is required in order to practice law in California.

The State Bar is governed by a 23-person Board of Governors, comprised of 17 elected lawyers and six additional members appointed by the Governor of California, the State Assembly and the State Senate. The 17 elected lawyers are selected by active State Bar members in a general election from nine State Bar districts statewide.

The California Young Lawyers Association ("CYLA") was established by the State Bar of California in 1935 to represent the interests of young lawyers and new practitioners. Members of the State Bar who are in their first five years of practice, or are 36 years of age or younger, are automatically members of CYLA. CYLA is governed by a 16 -person Board of Directors -15 directors are elected from each of the State Bar's nine districts and one director is elected President from the previous year's graduating class by the Board of Directors.

The elections for both the Board of Governors and the CYLA are staggered over three years, with individuals serving multiple year terms in order to provide continuity within the governing bodies.

The State Bar is seeking proposals from vendors to design, conduct, operate, and manage the 2006, 2007, and 2008 Annual Election for the Board of Governors and the CYLA Board of Directors.

In accordance with the State Bar's procurement policies, all contracts in excess of \$50,000 are subject to formal competitive bidding. As a governmental agency, the State Bar ordinarily receives governmental pricing and contract terms and conditions.

II. GENERAL INFORMATION

A proposal should address each of the following scenarios for conducting the election:

1. A mail only election, including costs for: (a) tabulation of paper ballots at State Bar facilities; and as an alternative, (b) tabulation at vendor facilities; and
2. A proposal for a "hybrid" election that includes both internet voting and mailed ballots, tabulation (paper ballots and internet ballot) at vendor facilities; and
3. An electronic recount of: (a) the entire election; and (b) each particular district in the election.

Proposals should be made for each of these scenarios, and should include the cost breakdown for years 2006, 2007, and 2008. Please refer to **EXHIBIT 1** for a comprehensive list of cost proposal requirements.

After reviewing all proposals, the Bar will select the highest scored vendor, who will be awarded a contract for services. The final contract for services will be for either a "hybrid" or a mail only election. The Bar will make the ultimate determination of the type of election after evaluating the cost and practicality of each scenario.

1. Submission Requirements

The submission requirements for the RFP are detailed below. Any proposal will constitute an irrevocable offer for thirty (30) business days following the deadline for its submission. Reference to a certain number of days in this RFP means business days unless otherwise specified. Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

Where any notice is required or permitted to be made in writing, the notice must be sent by U.S. mail and may be sent by either facsimile or e-mail.

Responses to the RFP must contain the following information:

1. Qualification statement of bidder (including description of similar projects).
2. History of firm, including identification and qualifications of project director and other key staff proposed to work on project.
3. The most recent years' annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.
4. References (at least four, including contact name and phone number) from organizations which have used your services for similar projects.
5. Evidence that vendor, if a corporation, is in good standing and qualified to conduct business in California, copies of business licenses, professional certifications or other credentials applicable to the services.
6. An overall description of the techniques, approaches and methods to be used in performing the services as specified by the State Bar herein.
7. Written proposal describing the plans for accomplishing the required work, including a time line and deadlines for all incremental tasks.
8. Separate bids pricing costs and compensation for each of the scenarios described above. The bid must provide a breakdown of costs for professional services, materials, printing and postage, and any other costs, including but not limited to the cost of duplicate ballots as described below. A proposal will not be considered responsive unless it contains pricing for each of the six scenarios described on **EXHIBIT 1.**

Proposals may be deemed non-responsive and will not be further considered for failing to submit a response or documentation that addresses each of the submission requirements described above.

2. Rejection of Proposals

The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a proposer from full compliance with the RFP requirements.

Any proposal may be rejected in any case where it is determined that the proposal is not really competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

3. Evaluation Process and Highest Scored Proposer

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Proposer ("HSP").

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require a proposer's representative to answer questions with regard to the proposal and/or require certain proposers to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those proposers falling within a competitive range, and request revised pricing offers from such proposers and make an award and/or conduct negotiations thereafter.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight to be assigned to each criterion appears following each item.

1. Responsiveness of the proposal to original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements (20%).
2. The technical ability, capacity, and flexibility of the proposer to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (35 %).

3. The financial viability of the proposer as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (15%).
4. The total cost of the proposal solution. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30%).

4. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and sent by facsimile and regular mail to proposers on or about **October 28, 2005** of the Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by **November 4, 2005**. The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work/Scope of Services and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other proposer who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSP agree to terms and execute a contract, that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with the next highest scored proposer, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attn: Peggy Van Horn, Chief Financial Officer
E-mail: Peggy.VanHorn@calbar.ca.gov
Facsimile: (415) 538-2389

5. Errors in the RFP

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the proposer should immediately provide the State Bar with written notice of

the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential proposers to whom the RFP was sent.

If prior to the date fixed for submissions, a proposer knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the proposer shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

6. Questions Regarding the RFP

The State Bar of California

180 Howard Street
San Francisco, CA 94105-1639

Attn: Biljanna Sivanov
E-mail: Billie.Sivanov@calbar.ca.gov
Facsimile: (415) 538-2255

All questions and answers regarding the RFP may be shared with all proposers.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the proposer may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the proposer must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the proposer will be notified.

A proposer who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. Any such request must be received by the State Bar within 3 days of receipt of the RFP, but in no event later than 5 days before for submitting proposals.

7. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to the proposers to whom the RFP was sent. If any proposer determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following the receipt of the addendum.

8. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the proposer. The proposer may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

9. Protest Procedure

A proposer may protest the award if it meets all the following conditions:

1. The proposer has submitted a proposal that it believes to be the lowest cost responsible proposal, under the criteria set forth above;
2. The proposer believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The proposer believes that the State Bar has incorrectly selected another proposer.

A proposer qualified to protest should contact Karen Hagelund at the State Bar of California, e-mail Karen.Hagelund@calbar.ca.gov, phone (415) 538-2299, to attempt an informal resolution. If she is unable to resolve the protest to the proposer's satisfaction, the proposer must file a written protest within 5 days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons the proposer believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attn: Peggy Van Horn, Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

10. News Releases

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

11. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the proposer. One copy of each proposal will be retained for official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation may be marked as proprietary and confidential. The proposer's consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, a proposer agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

III. SCOPE OF SERVICES

1. Introduction

The winning bidder will design, conduct, operate and manage the State Bar's elections for the Board of Governors and the Board of Directors of CYLA, in accordance with requirements and specifications issued by the State Bar. The State Bar is required by Business and Professions Code section, 6010 et seq. and by Article II of the Rules and Regulations of The State Bar of California (as amended January 23, 2003), a copy of which is attached hereto and incorporated by reference herein as **EXHIBIT 3**, to hold an annual election among its active membership. As of September 8, 2005, the State Bar had **137,738 active members**, as indicated on the chart below. Of the 137,738 active members, 37,611 were CYLA members.

DISTRICT	ALL MEMBERS	CYLA MEMBERS
District 1	2,742	462
District 2	10,224	2,291
District 3	20,685	5,878
District 4	16,901	5,240
District 5	6,329	1,294
District 6	8,756	1,855
District 7	45,803	13,120
District 8	13,404	3,733
District 9	12,894	3,738
TOTAL	137,738	37,611

2006. In 2006 the Board of Governors will have five seats up for election. Districts 1, 3, 5, 7 and 9 will each have one open seat. The 2006 CYLA Board of Directors will

involve five seats in the same State Bar districts. In 2006, if all seats are contested, approximately **88,453** ballots will need to be mailed by the vendor, with an anticipated fifteen to twenty percent (15% - 20%) voter return.

2007 & 2008. In 2007 the Board of Governors will have five seats up for election. Districts 2, 3, and 4 will each have one open seat and district 7 will have two open seats. The 2007 CYLA Board of Directors will involve five seats in the same State Bar districts. In 2008 the Board of Governors will have five seats up for election. Districts 4, 6, and 8 will each have one open seat and district 7 will have two open seats. The 2008 CYLA Board of Directors will involve five seats in the same State Bar districts.

The number of ballots to be mailed in 2007 and 2008 will vary depending on the number of active members at that time. In general, the State Bar has approximately 5,000 new admittees every year, however not all of those new admittees will be eligible to vote. Statistics show that in any given year, voter return is approximately fifteen to twenty percent (15% - 20%).

Members Deemed Elected. Pursuant to Business and Professions Code section 6019, an election will not be held in any district in which only one member files a nominating petition. Instead, that member is deemed elected for that seat. The State Bar would expect that the vendor would reduce the cost of the election should a member be deemed elected for an open seat.

Schedule. Please refer to **EXHIBIT 2** for a schedule of dates and deadlines.

2. Eligibility List (Member Name, Address, Member Number)

The Eligibility List ("list") of active members eligible to vote in the relevant districts will be furnished by the State Bar. The list will be in standard computer tape format or electronically transmitted and will provide the individual member's name, address and Bar number and, where applicable, a code indicating (CYLA) membership.

3. Description of Election Packet/ballots to be Printed

Vendor will develop both an internet and a paper ballot system following general procedures for conducting an election in accordance with the deadlines and specifications set forth in Article II of the Rules and Regulations of the State Bar. Vendor will mail ballot packets to all eligible voters and the ballot packets will include instructions for the voter to access an electronic ballot in lieu of completing the paper ballot, if the voter so desires. **The following descriptions will refer to 2006, but the vendor should assume the same descriptions, and similar time lines, will apply for years 2007 and 2008.**

1. **Quantity:** The actual number of packets to be mailed in any contested district election will be determined after the eligibility list closes (**April 20, 2006**). The State Bar shall furnish to the selected vendor the actual number of eligible voters in each district in which an election is to be held and the actual number of CYLA members in each district in which an election is to be held.

2. Packet, General: Packet materials should be printed, to the extent possible, on recycled paper and printed with environmentally safe ink. The packets shall be submitted to assigned State Bar staff for prior approval. Every effort should be made to design the packet to weigh one ounce or less. The packet must include the following:
3. Outgoing Envelope: Size and style to be determined by the selected vendor. Envelopes to be printed with the following statement: **"This Envelope Contains Your State Bar of California Election Ballot"** prominently displayed. Return address will be the State Bar address; however, return address to also contain **"c/o of Election Services."** Envelopes to be designed in conformity with U.S. Postal Service standards for maximum discounts for bulk rate mail (Standard A).
 - a. Return Envelope: Size and style to be determined by the vendor, but shall include "State Bar of California – 2006 Election Ballot." Method of distinguishing districts to be determined by the vendor. Envelopes to be designed in conformity with U.S. Postal Service standards for Courtesy Reply Mail. Voter to pay return postage.
 - b. Secret Ballot Envelope: Size and style to be determined by vendor, but shall include **"Secret Ballot Envelope"** in bold letters.
 - c. Signature of Voter: Signature line on the return envelope will be concealed under the flap. Vendor will determine design of signature line under the flap of the return envelope, along with a clear statement that:
 - i. The eligible voter must legibly print their name, address, membership number and sign, in ink, in the designated area or the ballot will not be tabulated; and
 - ii. The member attests, under penalty of perjury, that he or she is the member whose name appears on the envelope (language to be provided by State Bar).
 - iii. Internet voters: vendor will determine method and design for internet voters to comply with the above signature requirement on the electronic ballot.
 - d. Ballot: Size of the ballot and method to be used to distinguish districts to be determined by the vendor. Each district ballot shall be mailed only to eligible members in that district. The paper and electronic ballots shall contain the names of the candidates listed in random order using a random alphabet list provided by the State Bar. The front of the paper or electronic ballot must be printed with the State Bar district number, office number, if needed, and the names of the candidates and the city in which the candidate's practice is located. CYLA candidates must be listed separately from Board candidates and the paper or electronic ballot must clearly indicate that CYLA candidates are running for a different office than the Board of Governors. Paper and

electronic ballots shall contain instructions for voting, including a statement by vendor assuring confidentiality of the handling of ballots.

- e. Candidate Statement: Each candidate may submit a statement not exceeding 250 words, pursuant to article II, section 8 of the Rules and Regulations of the State Bar of California. Each ballot package shall contain statements submitted by the candidates, along with the statutory language authorizing the candidate statement. The statutory language will be provided by the State Bar. The State Bar will furnish to the vendor any history of public discipline of each candidate for inclusion in the candidate statement, as well as dates of admission to practice law. Particulars regarding the information set forth in this section to be determined by the vendor with the prior written approval of the designated State Bar representative.

4. Services to be Provided

1. Telephone Inquires from the Membership: The selected vendor is expected to respond to questions concerning the conduct of the election. Inquiries outside the scope of the conduct of the election, such as questions regarding State Bar rules, will be referred to designated State Bar staff.
2. Typeset Packet Materials: All materials to be included in the packet will be typeset by the vendor and subject to prior written approval by the designated representative of the State Bar.
3. Proofs and Press Checks: Designated representatives of the State Bar will approve print proofs and may conduct press checks of the paper and electronic ballots and the packet materials.
4. State Bar Eligibility List: Member name, address, member number and CYLA membership data will be supplied by State Bar to vendor in standard computer tape or electronic format.
5. Candidate Requests for Eligibility List/Voter List Mailing Labels: Vendor will provide lists and/or labels of members eligible to vote, if requested by a candidate, after **April 20, 2006**. Vendor also will provide lists and/or labels of members eligible to vote and/or those members who have not voted, to candidates, in conformity with State Bar procedure. Lists of those voters who have voted (voter list) and/or have not voted (nonvoter list) as of **May 26, 2006**, must be provided to the State Bar or to the candidates before **May 31, 2006**. Lists and/or labels will be timely provided by vendor to candidates at a reasonable cost and in a usable format (electronic file, disk or labels, as designated by the candidate). Candidates will be responsible for the cost of lists and/or labels requested. Vendor shall be responsible for the assessment and collection of all such costs from the candidates.
6. Insertion of Material Into Outgoing Envelope: Ballot, secrecy envelope, return envelope, and biographical statements must be placed into outgoing envelope.

7. Mail Packets Bulk Rate: Vendor will use a U.S. Post Office approved mail hygiene program that will pre-sort for the lowest available postal rate. Format outgoing envelope in conformity with current U.S. Postal Service standards for mass mailing to get maximum available discounts for bulk rate mail.
8. Duplicate Ballot Fulfillment: Vendor should design a fulfillment function to provide duplicate ballots to members on the eligibility list at the member's official address of record. Vendors should describe the proposed procedure, which must include a requirement that members requesting a duplicate ballot certify in writing that their ballot was not received or was lost or damaged. The ballot packages sent to members should include instructions to members who wish to request a duplicate ballot describing the duplicate ballot fulfillment process and should provide that duplicate ballot requests be sent to the San Francisco office of the State Bar. Vendor must not provide duplicates via fax, nor accept faxed ballots. The Vendor must describe all procedures to be used to assure that each member may cast only one vote, whether by paper ballot or electronic ballot. The Bar seeks proposals that will include a set number of duplicate ballots at no additional charge within the overall cost proposal presented as well as a per piece cost in the event that the number of requests exceed the set number.

5. Vendor Assurance of Security and Integrity of Election Process

Vendor will be required to represent and warrant that the election is properly and securely held so that only members on the eligibility list may vote, that only one vote per member is recorded and that each vote is by secret ballot such that the voter is not identified.

6. Collection, Counting, Data Entry, Canvassing of Ballots and Reporting of Results

Vendor to describe procedures for the following:

1. Collection of Data Entry and Securing Returned Ballots
 - a. Counting: Vendor to count and batch returned ballots. Returned ballots will be batched by district. Vendor to count, and also batch, the following: voided ballots and questionable ballots (if applicable). Voided ballots include, and shall be batched as follows: ballots without signature, ballots where more than one vote was cast, ballots where no vote was marked, ballots where the Vendor cannot determine which candidate was chosen and ballots with write-in candidates. Voided and questionable ballots shall be counted separately and provided to the State Bar for review by the canvassing board. Pursuant to statute, counting of ballots may occur at the Vendor's facility, or the San Francisco offices of the State Bar.
 - b. Data Entry: Vendor will record the number of votes for each candidate.
2. Canvassing: Vendor will tabulate votes for each candidate. Pursuant to statutory requirements, canvassing of all votes may be performed at the Vendor's facility, or

the San Francisco offices of the State Bar. Vendor to provide procedure for determining accuracy of election. Vendor will return voided or questionable ballots to the State Bar.

3. Report of Vote: Vendor will report results of canvassing and counting of the Board of Governors election and the CYLA election to the Secretary of the State Bar of California, or her designee, no later than 3:00 p.m., on **July 12, 2006**. Vendor must follow the published schedule of dates for the canvass of the election. Vendor will furnish to the State Bar a final list of the vote.
4. Data Base: The vendor will return the final voting list and election database to the State Bar within five (5) days of the canvassing of ballots.

7. Timeline

Time is of the essence for all of the deadlines associated with the Board of Governors and CYLA election. Vendor must complete the tabulation of all votes and present written reports of the Board of Governors election and the CYLA election to the Secretary of the State Bar, or her designee, by the deadlines set forth in **EXHIBIT 2**.

IV. CONTRACTING REQUIREMENTS

Upon selection of a vendor, the terms set forth in this RFP will be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable. If appropriate, the State Bar's first choice is to incorporate the master purchasing terms and conditions applicable to the State of California to the Bar's agreement with the Vendor.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Vendor's agreement to contract on these terms will be presumed unless specifically reserved by Vendor in its proposal.

1. Term

The term of the Agreement will be for one (1) year, with an option to extend the Agreement for two additional one (1) year increments.

2. Time of Essence

Time is of the essence with respect to vendor's performance of the services.

3. Warranties and Representations

Vendor will warrant and represent that, in the performance of the agreement, the materials, analyses, data, programs and procedures necessary to service the election will be accurate and of high quality and will be performed by competent personnel in a diligent and professional manner consistent with the highest standards of the industry.

Vendor will further warrant that all services provided will be in conformity with the specifications provided by the State Bar. Vendor will provide designated contact persons who will be available and empowered to remedy any non-conformity with this warranty.

4. Backup Facilities

The chosen vendor must have sufficient backup facilities so that the services shall be completed on or before the deadline in the event that the vendor's original facility cannot complete the project as planned. In the event that use of backup facilities results in additional expense to the State Bar, the vendor must reimburse the State Bar for all such expense.

5. Contract Modifications

The State Bar reserves the right to make changes, modifications, additions to or deletions from the scope of services and deadlines set forth herein ("changes"), regardless of the number, frequency or magnitude. Any request for increase in compensation and/or extension of deadlines submitted by vendor as a result of such change must include a detailed statement justifying the adjustment or extension. If the State Bar determines that no cost or schedule adjustments are warranted, the parties will meet in good faith and discuss the request. No direct, indirect or consequential damages, whether for delay, disruption, interference, impact, extended overhead, lost profits or any other cause, will be paid by the State Bar as a result of any request by the vendor.

6. Compensation

Compensation shall constitute full payment for all of vendor's services and personnel, including subcontractors, and for all costs and expenses incurred by vendor in performing the services. Compensation shall be conditioned upon completion of services to the satisfaction of the State Bar and will be made on a schedule which provides for a down payment of 30% plus estimated cost of postage upon execution of the agreement, a progress payment upon mailing of ballot materials of 20%, with final payment upon submission of the election results to the State Bar. Any reimbursement to vendor for travel expenses will be made pursuant to the State Bar's Travel and Business Expense policy, a copy of which is attached as **EXHIBIT 4**.

7. Equipment, Tools, Supplies

The vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required to perform the services under the agreement. The vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under the agreement.

8. Indemnity Obligations

To the fullest extent permitted by law, the vendor will agree to protect, indemnify, defend and hold the State Bar, and the State Bar's Board of Governors, officers, employees, volunteers, agents and representatives and each of their successors and assigns (the "State Bar") entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the agreement; (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by vendor, vendor's employees, subcontractors, agents, representatives or assigns in the performance or non-performance of the professional services required to be performed by the vendor under the agreement; (c) any unauthorized use of Confidential Information; (d) any third party claims of State Bar candidates arising from the need to conduct a second election; or (e) the State Bar's enforcement of its rights under the indemnity provision. Vendor will agree that its obligations under the indemnity will survive the expiration and termination of the agreement.

In the event both the State Bar and vendor are named as defendants in the same civil action, and the State Bar, in its sole discretion, determines that a conflict of interest exists between the parties, vendor shall provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein the State Bar is defended by vendor.

9. Insurance Obligations

Vendor agrees to provide and keep in full force and effect during the term of the agreement, at the vendor's own cost and expense, the following insurance policies for the joint benefit of the vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance coverage with a general aggregate limit (other than products/completed operations) of at least Four Million Dollars (\$4,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least Two Million Dollars (\$2,000,000.00) each occurrence limit;
2. Workers' Compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence; and
3. Printers errors and omissions coverage with a general aggregate limit of at least Two Million Dollars (\$2,000,000.00);
4. Professional liability insurance coverage with a limit of at least Two Million Dollars (\$2,000,000.00); and

5. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
6. Vendor shall provide the State Bar at 180 Howard Street, San Francisco, CA 94105, Attn: Andrew Conover, Procurement Supervisor, with true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days following the execution of the agreement. Each such policy of insurance shall name the State Bar, along with its Board of Governors, officers, employees, volunteers, agents, representatives and each of their successors and assigns, as additional insureds and shall state that such policy or policies shall be primary and that any insurance carried by State Bar shall be noncontributing with respect thereto. Each such policy of insurance maintained pursuant to the agreement shall provide for thirty (30) days' prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If vendor fails to secure and maintain insurance policies in compliance with the agreement, the State Bar may secure the appropriate insurance policies and the vendor shall pay upon demand the cost of same to the State Bar or the State Bar may terminate the agreement. In addition to the insurance required to be obtained and maintained by the vendor, if the vendor assigns any portion of the duties under the agreement in accordance with the terms thereof, each subcontractor or assignee must purchase and maintain the same insurance coverage required hereunder.

Vendor shall immediately notify the State Bar if the vendor's commercial general liability insurance contains restrictive endorsements applicable to the services to be provided herein and other than those restrictive endorsements normally included in the State of California. If the vendor's commercial general liability insurance contains such restrictive endorsements, the vendor will have five (5) business days to remove all such restrictions. If the vendor is unable to do so, the State Bar may, at its sole option, terminate the agreement.

10. Termination

1. At Will. The agreement may be terminated by the State Bar, in its sole discretion, upon fourteen (14) days' written notice to the vendor. In the event of such termination not due to the default by the vendor under the agreement, the vendor's sole compensation will be for that portion of the services performed to the date of termination, together with reimbursable expenses, if any, then due pursuant to the agreement; provided, however, that the vendor will not be paid for any services or reimbursable expenses associated with any work or service which was not authorized by the State Bar pursuant to the agreement.
2. Default by Vendor. The agreement may be terminated by the State Bar immediately upon written notice to the vendor in the event the vendor is in default under any of the provisions of the agreement. In the event the agreement is terminated due to the default by the vendor, the vendor will not be entitled to receive any compensation for services performed or for any reimbursable

expenses incurred and the State Bar will have the right to have the services completed by other parties and the vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the compensation and reimbursable expenses, if any, provided for in the agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's consequential damages caused directly or indirectly by the vendor's default.

3. Automatic Termination. The agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) any substantial change in the nature, ownership or control of the business of either party; (c) vendor assigns or attempts to assign the agreement or any rights or duties therein without the State Bar's prior written consent; or (d) expiration of the agreement.

11. Ownership of Documents

The State Bar's database of its electorate and other proprietary information owned, prepared, or developed by the State Bar, including, but not limited to, all Confidential Information, will remain the property of the State Bar or will be irrevocably assigned by vendor to the State Bar. Vendor will refrain from disclosing any and all Confidential Information to any third party without first obtaining the written consent of the State Bar. Vendor will not use or permit a third party to use any of the work product or Confidential Information in connection with the project or any other project or for any purpose whatsoever without the written consent of the State Bar.

12. Confidentiality and Publicity

Vendor will retain all Confidential Information in the strictest confidence and will neither use it nor disclose it to anyone without the prior written consent of the State Bar or by court order. The term "Confidential Information" is defined as any and all membership data including, without limitation, the membership list of active members provided by the State Bar and any and all materials and work product associated with the election including, without limitation, all computer tapes provided to vendor by the State Bar. Vendor recognizes that irreparable harm can be occasioned to the State Bar by disclosure of such Confidential Information. Accordingly, the State Bar may enjoin such disclosure. Except as provided in the agreement, in no event will vendor disclose to any third party without the State Bar's prior written consent (1) the election results, or (2) any Confidential Information. Vendor will obligate its employees, subcontractors, and agents to comply with this provision and further will agree to take all steps necessary to safeguard such information and prevent its disclosure to any outside party using the same degree of care and discretion that vendor uses with respect to information relating to its own business proprietary information. Data pertaining to the State Bar's business will not be commingled with that of any other customer without the prior written consent of the State Bar.

13. Remedies

In the event vendor fails to meet the deadlines specified under the contract, vendor will either reimburse the State Bar its costs (including, without limitation, all direct costs, indirect costs, and consequential damages resulting from such failure) to complete the election, or re-conduct the election at no cost to the State Bar, at the State Bar's sole discretion. In the event a recount is required, due to the fault of vendor, vendor will conduct such recount at no cost to the State Bar.

14. Nondiscrimination

During the performance of this agreement, vendor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Vendor is expected to comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated thereunder (California Administrative Code, Title 2, section 7285.0 et seq.). Vendor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

15. Assignment/Subcontracting

1. Assignment. Vendor will not assign or transfer its interest, in whole or in part, under the agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties also acknowledge that the State Bar's obligations under the agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in the agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under the agreement, until such time as the State Bar or the State Bar's assignee makes payment to the vendor of all fees and payments then due and payable to the vendor.
2. Subcontracting. Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the services, subject to the prior written approval of the State Bar.

Vendor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between the vendor and its subcontractor which will be maintained during the term of the agreement. No subcontract will be approved unless the vendor provides a written guarantee that the vendor's firm is contractually obligated for the performance of all subcontracted work and all contractual responsibilities as if such subcontracting did not occur.

16. Conflict of Interest

Vendor will immediately notify the State Bar, in writing, of any potential or actual conflicts of interest that arise or exist between or among the State Bar and any other persons and/or entities for whom Vendor provides services.

The State Bar, as a public corporation, is subject to statutorily mandated conflict of interest codes. (See Business and Professions Code section 6036; Government Code sections 82019 and 82048). Vendor will familiarize itself with the State Bar's conflict of interest codes and avoid any and all situations that could result in violation of the provisions of said codes.

17. General Provisions

1. Force Majeure. In the event vendor or the State Bar is delayed in performing any of its respective obligations under the agreement due to an event of Force Majeure, as defined below, and only if notice of such delay is properly given, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed. Notwithstanding the above, however, no delay will be permitted beyond **May 1, 2006** for mailing of ballots and **July 12, 2006** for counting and canvassing of ballots. In the event of any anticipated or actual delay due to Force Majeure, the affected party shall exercise due diligence to shorten, avoid and mitigate the effects of the delay. Force Majeure is defined as acts of God, war, strikes, civil disorder, domestic or international terrorism, fire, government regulation, and other emergencies which are beyond the reasonable control of a party, but do not include mechanical or computer failures.

In the event of delay due to Force Majeure, the party with knowledge must notify the other party of the cause and estimated duration. Such notice must be given at the earliest possible opportunity, but in no event more than twenty-four (24) hours after the party knows or reasonably should know of the delay. No claim for an adjustment to the schedule will be valid unless such notice is submitted within the foregoing time period.

In no event will vendor be entitled to any adjustment in compensation because of any delay due to Force Majeure. No direct, indirect or consequential damages, whether for delay, disruption, interference, impact, extended overhead, lost profits or any other cause, will be paid by the State Bar as a result of any delay due to Force Majeure.

2. Governing Law. This Agreement is be deemed to have been made and entered into by the parties at San Francisco, California, and will be construed according to the laws of the State of California without regard to conflict of law principles. Any and all claims arising out of this Agreement must be litigated or arbitrated in the appropriate forum in San Francisco, California.
3. Arbitration. The parties will agree to cooperate fully and diligently with each other to resolve any dispute within thirty (30) days of the event causing such dispute.

Any dispute in excess of \$5,000 that is not resolved within said thirty (30) days period will be referred to binding arbitration. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part 3, Title 9 of the California Code of Civil Procedure. The arbitrator shall be bound to apply legal principles in accordance with California law, without regard to its conflict of laws principles, unless the alleged claim or dispute is otherwise pre-empted by federal law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law, including but not limited to California Government Code section 810 et seq. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this Agreement. The cost of the arbitration will be borne equally by the parties and each party will bear its own attorneys fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco.

Except if the agreement is terminated, or if otherwise agreed by the parties, both parties will be required to continue to fulfill their respective obligations under this agreement during the continuance of any arbitration proceedings. The arbitrator chosen in accordance with these provisions will not have the power to alter, amend or otherwise affect the terms of this provision or the agreement.

4. License. In those instances where required, the vendor will represent and warrant that the vendor holds a license, permit or other special license to perform the services pursuant to the agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the vendor is performing the services pursuant to the agreement.
5. Audit. The State Bar reserves the right to conduct an audit of any records, receipt, accountings, and supporting documentation pertaining to this Agreement. Vendor agrees to maintain such records for a minimum of 3 years after final payment, unless a longer period is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.